

Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

May 11, 2009

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Bernanke:

The announcement of the Capital Assistance Program, on February 25, 2009, described the Program's objectives as "[restoring] . . . confidence in the strength and viability of our financial institutions."¹ The announcement emphasizes a "one-time forward looking supervisory assessment" designed to test the ability of each of the nation's 19 largest bank holding companies to absorb the losses generated by a worse-than-expected decline in economic activity. As the Federal Reserve Board recognizes, the ability of such institutions to maintain adequate capital under current conditions is essential to the efforts to stabilize the financial system.

Because of their importance, the Congressional Oversight Panel (the "Panel") has undertaken a study of the theories underlying and details of the assessment. The Panel is being assisted in conducting its study by Professors Eric Talley and Johan Walden. Professor Talley is a member of the faculty of the UC Berkeley School of Law (where he is co-director of the Berkeley Center for Law, Business, and the Economy), and a visiting member of the faculty of the Harvard Law School. Professor Walden is a member of the faculty of the UC Berkeley Haas School of Business.

I am writing to you, in my capacity as Chair of the Congressional Oversight Panel, to obtain the information specified below (the "Specified Information") and to arrange a series of meetings (the "Meetings") to discuss the Specified Information and related topics. The Specified Information and the Meetings are necessary for the Panel to carry out section 125 of the Emergency Economic Stabilization Act of 2008, and the Panel is seeking the Specified Information and the Meetings pursuant to section 125(e)(3) of that Act.

¹ U.S. Treasury, *The Capital Assistance Program and its role in the Financial Stability Plan*, at 1 (Feb. 25, 2009).

The Specified Information is:

1. all memoranda concerning, and written descriptions of, any risk management, bank capital, economic, regulatory, legal, or statistical model or theory underlying or contributing to the Assessment;
2. all memoranda concerning, and written descriptions of, what the Assessment will attempt to measure or has attempted to measure, including, but not by way of limitation, the manner in which the Program proposes to measure or has measured cataclysmic risk;
3. all memoranda concerning, written descriptions of, and simulations pertaining to, the distributional and any other assumptions on which the Assessment rests, and the theories underlying and content of the projections it will employ or has employed, both in general terms and with respect to specific institutions;
4. all memoranda concerning, written descriptions of, and simulations pertaining to, the theories underlying and content of all economic assumptions that may be or have been incorporated in, or used as part of, the Assessment, both in general terms and with respect to specific institutions;
5. all memoranda concerning, written descriptions of, and simulations pertaining to, the thresholds, terms, and manner in which the Assessment will be or have been applied to specific institutions, including, but not by way of limitation, the ranges of outcomes within which any judgments about capital adequacy or the need for infusion of additional capital will be or have been made, whether in general terms or with respect to any specific institution; and
6. all information obtained during, or contained in notes or recordings of, the Meetings.

The Meetings. The Meetings will be one or more gatherings to discuss all or part of the Specified Information, attended by (i) officials of the Federal Reserve Board, including, but not by way of limitation, the senior officials of the Federal Reserve Banks, who are responsible for the Assessment, (ii) members or staff of the Panel, or both, and (iii) Professor Talley, Professor Walden, or both.

* * * *

Capitalized terms in this letter that are not defined above are defined in a document entitled “Congressional Oversight Panel – Supervisory Assessment Request, Definitions and Protocol for Document Production and Protection, dated May 11, 2009,” enclosed with this letter.

I would be happy to answer any questions about this letter that you may have. If you would prefer, a member of your staff can contact the Panel's Executive Director, Naomi Baum, to discuss any such questions. Ms. Baum's telephone number is [REDACTED].

Kindly respond to the requests for information, and for the meetings, described, within seven (7) calendar days from the date of this letter. In that connection, please provide the Panel with the names of one or more individuals who will be responsible for responding to this letter within three (3) days from the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Warren", written in a cursive style.

Elizabeth Warren
Chair
Congressional Oversight Panel

Enclosure

Congressional Oversight Panel – Supervisory Assessment Request
Definitions and Protocol for Document Production and Protection,
dated May 11, 2009

Documents defined in the letter, dated May 11, 2009 (the “Letter”), from Elizabeth Warren, Chair of the Congressional Oversight Panel (the “Panel:), to Hon. Ben S. Bernanke, Chairman of the Federal Reserve Board, to which this document relates, shall have the same meaning in this document as they have in the Letter.

Definitions.

As used in the Letter:

1. Any reference to “assessment” means the one-time forward looking supervisory assessment described in the Treasury White Paper entitled “The Capital Assistance Program and its Role in the Financial Stability Plan,” (February 25, 2009), appearing at http://www.ustreas.gov/press/releases/reports/tg40_capwhitepaper.pdf, as such supervisory assessment has been defined, designed, and implemented, and applied both generally and to all relevant bank holding companies and their subsidiaries, by staff of one or more of the Department of the Treasury, the OCC, OTS, the Board of Governors of the Federal Reserve System (including, but not by way of limitation, the Federal Reserve Banks), the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

2. Any reference to “information” means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, by whomever prepared, whether in “hard copy” (i.e., paper) form or stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, as well as the identity of any person employed by or serving as an agent or consultant for the Government, or with whom any employee or agent or consultant of the Government may have communicated, who may have knowledge relevant to the requested information and information sufficient for the Panel to contact such person including but not limited to such person’s name, title, telephone number, and electronic mail address.

3. Any reference to the “Federal Reserve Board,” or to any other department, agency, or instrumentality of government, shall include a reference to any bureau, office, or instrumentality thereof, including, but not by way of limitation, the Federal Reserve Banks.

Document Production.

1. The specified information is limited to any and all information described in the nine paragraphs of the Letter that is in the possession of the Federal Reserve Board (directly or subject to physical or electronic storage on behalf of the Federal Reserve Board), or to which the Federal Reserve Board has access, or the right (whether via existing agreement or under the law) to obtain access. Information is subject to the terms of this request regardless of the source of such information, the person or persons by or on behalf of whom such information was prepared or generated, and the person or persons by whom such information is now held.

2. To the extent that the Federal Reserve Board is aware of any information that is not in Federal Reserve Board's possession, custody, or control that would otherwise constitute specified information, please provide information sufficient to identify and locate that information and to request its production to the Panel.

3. In the event that specified information is withheld on any basis, please provide to the Panel a written description of (i) the type of information that is being withheld; (ii) the general subject matter to which the information relates; (iii) the reason such information is being withheld, including, but not by way of limitation, the statute or regulation under which such information is being withheld and the application of such statute or regulation to such information (described with sufficient detail that the Panel can determine the applicability of such statute or regulation to the information); (iv) the date, author, and addressee, if applicable; and (v) the relationship of the author and addressee, if applicable.

4. This request is continuing in nature and applies to any newly discovered information or to information generated or received after the date of the Letter. To the extent that any information is not provided to the Panel because it has not been located or discovered as of the return date or is generated or received after the return date, please produce such information to the Panel as soon as possible after its discovery or, if the information will not be produced for any reason, please provide the Panel with the information requested in the immediately preceding paragraph of this letter.

Document Protection.

1. Any individual hired or retained by the Panel under section 125(d)(2) of the Emergency Economic Stabilization Act of 2008 will execute a confidentiality agreement with the Panel prior to obtaining access to any portion of the specified information provided to the Panel by the Federal Reserve Board. The agreement will provide that such individual is subject to the ethical and non-disclosure obligations of an employee of the United States Senate and of the Panel. Any issues relating to such obligations may be directed to, and will be addressed by, the Panel's Ethics Counsel.

2. The Panel will not provide any of the specified information directly to the public. Instead, it will refer those who request such specified information to the Federal Reserve Board.

3. The Panel will not disclose the text of any of the specified information in any document originated by the Panel, without notifying the Federal Reserve Board and providing a reasonable time for the Federal Reserve Board to state its objections. Notwithstanding the immediately preceding sentence, the Panel may include a general description or descriptions, analysis, or analyses of any such information in any such document. Any draft of any such documents prepared by any consultant to the Panel will be reviewed by senior staff of the Panel to assure that no improper disclosure has occurred.

4. The Panel does not intend to disclose to the public any trade secret and commercial or financial information that is contained within or as part of any specified information and that is privileged or confidential such that it is subject to the terms of 18 U.S.C. § 1905.

5. We believe that the Panel is generally not authorized to withhold information from Congress, see 31 U.S.C. § 716(e)(3), or from a court. Should the Panel receive a congressional request or court order that would require the Panel to produce any portion of the Specified Information, the Panel will notify the Federal Reserve Board of the request prior to disclosure

and provide the Federal Reserve Board with the opportunity to express any concerns it may have about such production to the requester or to the court. In addition, the Panel will notify the recipient of the records of the proprietary nature of the material, including using a legend advising that further release may be prohibited by 18 U.S.C § 1905.

6. To ensure the confidentiality and security of the specified information, the Panel will store such information in locked cabinets in a locked room on the Panel's premises, to which only the Panel's Executive Director, Deputy Director, and Chief Clerk have keys. A log will be kept of any person who is granted access to that room.

Except as provided in the next paragraph, electronic data will be stored on a single computer in encrypted form; such computer will be placed in the locked room described in the preceding paragraph. The computer will be password-protected and will not be connected to any other computer or network; the USB ports that would otherwise permit copying from that computer will be disabled. Logs will be kept of any document printed from the computer and such document will be numbered to permit its identification; any such documents will be subject to the same controls as those described above for documents originally in paper form.

With the approval of the Federal Reserve Board (and, where applicable, any other department, agency, or instrumentality of the government that originated such Specified Information) Specified Information may be stored on a secure computer to which Professors Talley and Walden shall have Internet access on an encrypted basis or on a secure computer located at the Federal Reserve Banks of Boston and San Francisco.